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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

**BROOKSHIRE BROTHERS
HOLDING, INC., ET AL**

: DOCKET NO. 04-1150

VS.

: JUDGE TRIMBLE

**TOTAL CONTAINMENT, INC., ET
AL**

: MAGISTRATE JUDGE WILSON

JUDGMENT

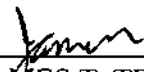
Pursuant to the Memorandum Ruling of this date,

IT IS ORDERED, ADJUDGED AND DECREED that Commerce & Industry Insurance Company of Canada's Motion for Summary Judgment Against Plaintiffs as to Prescription and the Economic Loss Rule (doc. #468) is hereby **GRANTED IN PART** and **DENIED IN PART**. The motion to dismiss all of Brookshire Brothers' claims as time barred is hereby **GRANTED** to the extent that all claims for injuries that occurred prior to August 15, 2002 have prescribed and will be dismissed; the motion to dismiss Brookshire Brothers' negligence claims because they are barred by the economic loss rule is hereby **GRANTED** to the extent that Texas law bars recovery for those damages that occurred in Texas, with the exception of damages to other property which includes land contamination in Texas, and **DENIED** to the extent that damages sustained in Louisiana are governed by Louisiana law and the economic loss rule does not apply.

The Court determines that there is no just reason for delay and hereby directs entry of final judgment under rule 54(b) of the Federal Rules of Civil Procedure. The Court is of the opinion that the decision rendered in this matter as to the issue of prescription involves a controlling question of law

as to which there is substantial ground for difference of opinion, and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. Hence, pursuant to Rule 1292 (b) of the Federal Rules of Civil Procedure the Court grants a certificate of appealability. The appealing party shall have ten days from the entry of this order to file a petition for permission to appeal to the United States Court of Appeals for the Fifth Circuit.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 18th day of October, 2006.



JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE